

**FILED**

**United States Court of Appeals  
Tenth Circuit**

**UNITED STATES COURT OF APPEALS**

**September 11, 2017**

**FOR THE TENTH CIRCUIT**

**Elisabeth A. Shumaker  
Clerk of Court**

STATE OF UTAH, on behalf of the Utah  
Department of Environmental Quality,  
Division of Air Quality,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY; SCOTT  
PRUITT, Administrator of the United  
States Environmental Protection Agency,

Respondents.

No. 16-9541  
(EPA No. EPA-R08-OAR-2015-0463)

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CARBON COUNTY, UTAH; EMERY  
COUNTY, UTAH; UTAH MUNICIPAL  
POWER AGENCY,

Petitioners - Intervenors,

and

HEAL UTAH; NATIONAL PARKS  
CONSERVATION ASSOCIATION;  
SIERRA CLUB; UTAH PHYSICIANS  
FOR A HEALTHY ENVIRONMENT,

Respondents - Intervenors.

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CHAMBER OF COMMERCE OF THE  
UNITED STATES OF AMERICA;  
EDISON ELECTRIC INSTITUTE,

Amici Curiae.

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PACIFICORP,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY; SCOTT  
PRUITT, Administrator, United States  
Environmental Protection Agency,

Respondents.

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CARBON COUNTY, UTAH; EMERY  
COUNTY, UTAH; UTAH MUNICIPAL  
POWER AGENCY,

Petitioners - Intervenors,

and

HEAL UTAH; NATIONAL PARKS  
CONSERVATION ASSOCIATION;  
SIERRA CLUB; UTAH PHYSICIANS  
FOR A HEALTHY ENVIRONMENT,

Respondents - Intervenors.

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CHAMBER OF COMMERCE OF THE  
UNITED STATES OF AMERICA;  
EDISON ELECTRIC INSTITUTE,

Amici Curiae.

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No. 16-9542  
(EPA No. EPA-R08-OAR-0463)

UTAH ASSOCIATED MUNICIPAL  
POWER SYSTEM,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY; SCOTT  
PRUITT, Administrator of the United  
States Environmental Protection Agency,

Respondents.

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CARBON COUNTY, UTAH; EMERY  
COUNTY, UTAH; UTAH MUNICIPAL  
POWER AGENCY,

Petitioners - Intervenors,

and

HEAL UTAH; NATIONAL PARKS  
CONSERVATION ASSOCIATION;  
SIERRA CLUB; UTAH PHYSICIANS  
FOR A HEALTHY ENVIRONMENT,

Respondents - Intervenors.

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CHAMBER OF COMMERCE OF THE  
UNITED STATES OF AMERICA;  
EDISON ELECTRIC INSTITUTE,

Amici Curiae.

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DESERET GENERATION AND

No. 16-9543  
(EPA No. EPA-R08-OAR-2015-0463)

TRANSMISSION COOPERATIVE,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY; SCOTT  
PRUITT, Administrator, United States  
Environmental Protection Agency,

Respondents.

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CARBON COUNTY, UTAH; EMERY  
COUNTY, UTAH; UTAH MUNICIPAL  
POWER AGENCY,

Petitioners - Intervenors,

and

HEAL UTAH; NATIONAL PARKS  
CONSERVATION ASSOCIATION;  
SIERRA CLUB; UTAH PHYSICIANS  
FOR A HEALTHY ENVIRONMENT,

Respondents - Intervenors.

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CHAMBER OF COMMERCE OF THE  
UNITED STATES OF AMERICA;  
EDISON ELECTRIC INSTITUTE,

Amici Curiae.

No. 16-9545  
(EPA No. EPA-R08-OAR-2015-0463)

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**ORDER**

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Before **TYMKOVICH**, Chief Judge, and **KELLY**, Circuit Judge.

These matters arise under the visibility provisions of the Clean Air Act. The State of Utah, two Utah counties, and the owners and operators of certain Utah power plants seek a stay pending review of portions of a 2016 final rule promulgated by the Environmental Protection Agency (EPA). *See Approval, Disapproval and Promulgation of Air Quality Implementation Plans; Partial Approval and Partial Disapproval of Air Quality Implementation Plans and Federal Implementation Plan; Utah; Revisions to Regional Haze State Implementation Plan; Federal Implementation Plan for Regional Haze*, 81 Fed. Reg. 43,894 (July 5, 2016) (the Final Rule). The Chamber of Commerce of the United States filed an amicus brief in support of a stay.

Initially, EPA opposed a stay. Certain environmental groups also opposed a stay. While these matters were pending, however, EPA decided to reconsider the Final Rule. It moved to abate these matters pending the reconsideration process and informed the court that it no longer opposes a stay. The stay movants then moved the court to take judicial notice of EPA's decision to reconsider and moved for leave to file supplemental replies addressing the effect of EPA's reconsideration on their stay motions. They do not oppose abatement so long as the court also grants a stay. The environmental groups continue to oppose a stay and also oppose abatement.

***Motions to Take Judicial Notice.*** The motions to take judicial notice and to file supplemental replies are granted. The Clerk is directed to file the supplemental replies attached to the motions to take judicial notice as of the date of this order.

**Motions for Stay.** This court considers the following factors: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Nken v. Holder*, 556 U.S. 418, 434 (2009) (internal quotation marks omitted); *see also* 10th Cir. R. 8.1. “A stay is not a matter of right, even if irreparable injury might otherwise result. It is instead an exercise of judicial discretion, and the propriety of its issue is dependent upon the circumstances of the particular case.” *Nken*, 556 U.S. at 433 (brackets, citation, and internal quotation marks omitted).

The court is persuaded that a stay is appropriate in the circumstances of this case and in an exercise of its discretion. Accordingly, the motions for stay pending review are granted. Those portions of the Final Rule (1) disapproving Utah’s implementation plan for reducing nitrogen oxide emissions from the plants and (2) promulgating an alternative federal implementation plan are stayed until this court orders otherwise. The date for complying with the requirements of the Final Rule shall be tolled for the number of days the stay is in effect.

**Motion to Abate.** It is well-established that “the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). “How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance.” *Id.* at 254-55. The movant, however, “must make out a clear case of hardship

or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to some one else.” *Id.* at 255.

In light of EPA’s decision to reconsider the Final Rule, it would be a waste of the court’s and the litigants’ resources and a hardship on EPA and the stay movants for the court to proceed with these matters. Accordingly, EPA’s motion to abate is granted.

These matters are abated until this court orders otherwise. To keep the court apprised of the progress of reconsideration, EPA shall file a status report on December 15, 2017, and every 90 days thereafter.

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker". The signature is written in black ink and includes a long, sweeping horizontal flourish at the end.

ELISABETH A. SHUMAKER, Clerk